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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,509	02/13/2004	Ali Ismail Abdel-Hadi	5853-343	8895
30448	7590	11/17/2005	EXAMINER	
AKERMAN SENTERFITT P.O. BOX 3188 WEST PALM BEACH, FL 33402-3188			FITZGERALD, JOHN P	
			ART UNIT	PAPER NUMBER
			2856	

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/779,509

Applicant(s)

ABDEL-HADI ET AL.

Examiner

John P. Fitzgerald

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 9-11, 13-17, 20-22, 24 and 26 is/are rejected.
- 7) ☒ Claim(s) 6-8, 12, 18, 19, 23, 25, 27 and 28 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/27/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

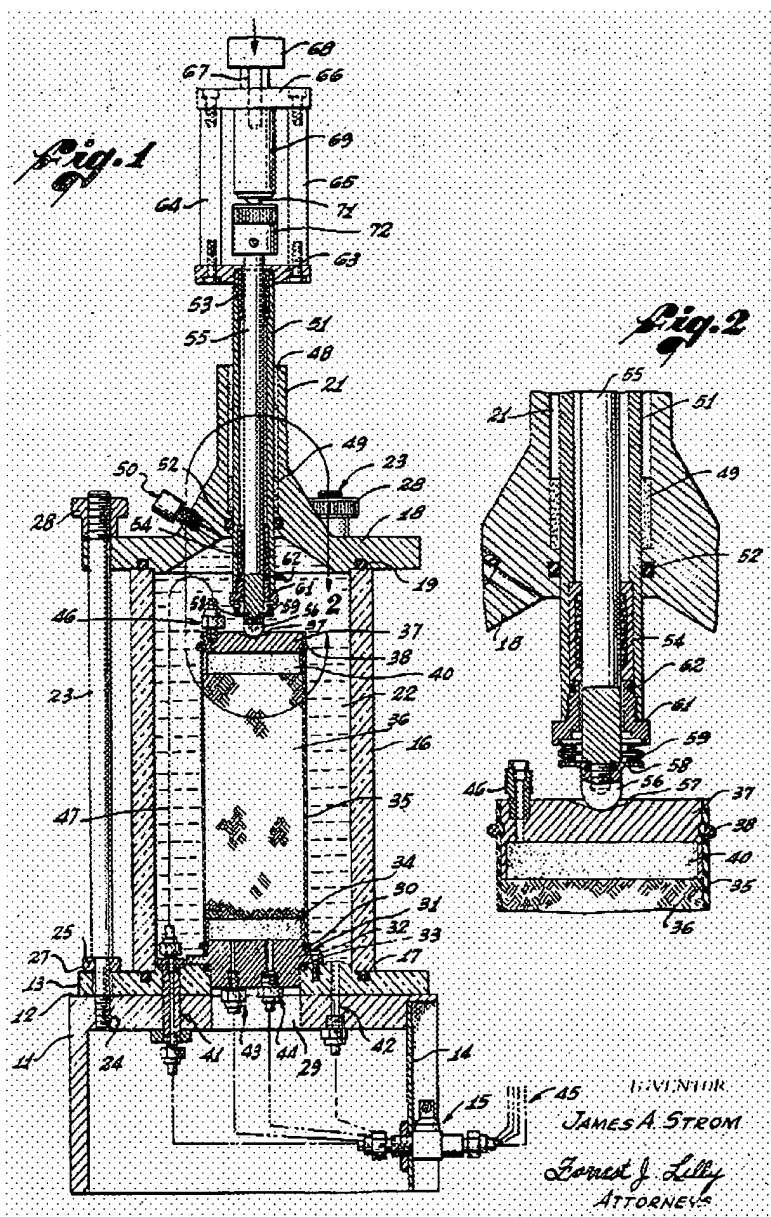
2. Claims 1-5, 9-11, 13-17, 20-22, 24 and 26 are rejected under 35 U.S.C. § 103(a) as being unpatentable over US 3,616,685 to Strom and US 6,935,159 to Knight et al. Strom discloses a device and method for measuring the properties associated with aerated particles (Fig. 1 below) including: an outer container (16) containing a fluid; an inner container positioned in the outer container and having at least one inlet (43, 44) at the bottom portion of the inner container and at least one outlet (46) at the top of the inner container (as recited in claims 1, 5, 16 and 17) for admitting/releasing a gas; inlet and outlet filters (34, 40) (as recited in claim 4); at least one load application device (Fig. 2) being a piston formed from a head coupled to a shaft (as recited in claims 10 and 21) passing through an outside wall (18) of the outer container and forming an end of the inner container; and a pressure sensing device (44) to be connected to the inner container (Strom: col. 4, lines 29-37) (as recited in claims 11 and 22); wherein the inner container is formed of a rubber membrane (note: latex is a form of rubber) (as recited in claims 2, 3, 14, 15); determining the load applied to the applied to the sample particulate (Strom: col. 4, lines 11-28) (as recited in claims 24 and 26). Strom does not expressly disclose a device and method for measuring properties associated with aerated particles wherein the fluid contained in the outer container is usable to determine changes in volume of aerated particles contained in the inner

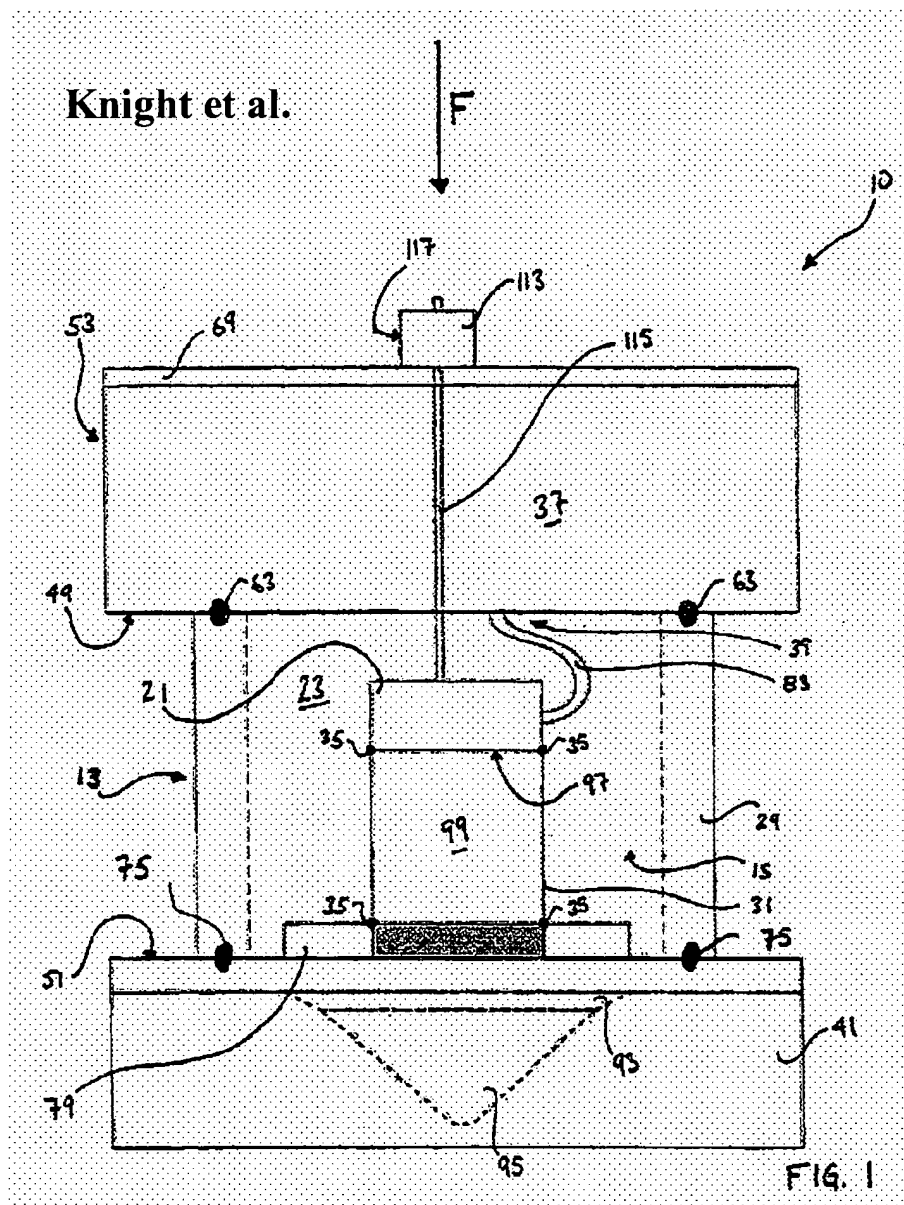
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container (i.e. volumetric change) (as recited in claims 1, 13 and 24) by monitoring the change in volume or level of the fluid in the outer container; or a storage device (i.e. computer/processor) to store acquired/measured data parameters (as recited in claims 9, 20 and 26). Knight et al. disclose a device and method for measuring the properties associated with aerated particles (Figs. 1-13) having many of the recited elements, including an outer rigid container and an inner flexible/resilient container being made of latex, an inlet and outlet, application of a force/load via centrifugal means further including sensor for measuring the load applied and pressure changes as well as a change in volume of the sample particles (Knight et al.: col. 2, lines 1-28); and a computer/processor (151) for receiving/storing data and performing calculations. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ sensors measuring the volume change and a computer/processor storage device, as taught by Knight et al., modifying the device/method for measuring properties associated with aerated materials disclosed by Strom, thus providing a means to determine the degree of sample/material consolidation exhibited by the sample during the load application process and sending/storing a signal to a receiver/processor indicative of the change (Knight et al.: col. 2, lines 16-20). Note: Functional recitation(s) using the words “for” (i.e. “for measuring,” and “for admitting a gas”) have been given little patentable weight because they fail to add any structural limitations and thereby regarded as intended use language. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. *In re Finstewalder*, 436 F.2d 1028, 168 USPQ 530 (CCPA 1971); *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) (“The manner or method in which such machine is to be utilized is not

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germane to the issue of patentability of the machine itself.”); *In re Otto*, 136 USPQ 458, 459 (CCPA1963). When interpreting functional language, if the prior art is capable of performing the claimed function—even if not directly disclosed—it anticipates. *In re Schreiber*, 128 F.3d 1473, 1478, 44 USPQ2d 1429, 1432 (Fed. Cir. 1997); *In re Sinex*, 309 F.2d 488, 135 USPQ 302 (CCPA 1962). See also MPEP § 2114, 2115.





***Allowable Subject Matter***

3. Claims 6-8, 12, 18, 19, 23, 25, 27 and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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***Conclusion***


4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant is invited to review the Prior Art recited on accompanying PTO 892 form for relevant art to the instant invention.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Fitzgerald whose telephone number is (571) 272-2843. The examiner can normally be reached on Monday-Friday from 7:00 AM to 3:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams, can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JF

11/14/2005



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